

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 190 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

MEHTA PARIKH & CO PVT LTD

Appearance:

1. INCOME TAX REFERENCE No. 190 of 1988

MR BB NAIK for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, following
question of law is referred to for the opinion of this
Court :-

"Whether, in law and on facts the payments on account of bonus and leave encashment to the Directors were required to be excluded for computing the disallowance u/s. 40(c) of the I.A. Act, 1961 ?"

2. Heard Mr BB Naik, learned standing counsel appearing for the revenue. No one appears on behalf of the respondent-assessee, thought the notice was duly served.

3. The Income-tax Officer disallowed a sum of Rs.64,681/- out of Directors' remuneration under Section 40(c) of the Income-tax Act, 1961. Being aggrieved by this order, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) and the order of the Income-tax Officer was confirmed. While confirming the said order, the Commissioner of Income-tax (Appeals) has relied on the order of his predecessor in office for assessment years 1978-79 and 1979-80. The assessee has taken up this issue in second appeal before the Tribunal and the Tribunal has observed that the disallowance made in respect of the remuneration paid to the Managing Director and other two Directors were included in the expenditure in respect of (i) rent and electricity bills, (ii) commission, (iii) bonus and (iv) leave encashment. The Tribunal has thereafter relying on its earlier order for assessment year 1980-81 had held that the amount in respect of bonus and leave encashment was not includible while computing disallowance under Section 40(c) of the Act.

4. Being aggrieved by the said decision of the Tribunal, the revenue has come in reference before this Court and the above referred question was referred to us for our opinion.

5. At the hearing of this reference, Mr Naik, the learned standing counsel has submitted that the issue involved in the present reference is squarely covered by the decision of this Court in the case of Ambica Mills Ltd. vs Commissioner of Income-tax, (1998) 231 ITR 583 and in the case of Commissioner of Income-tax vs. Ambica Mills Ltd., (2000) 244 ITR 742.

He has specifically invited our attention to the paragraph from the judgment of this Court in Ambica Mills Ltd. vs. Commissioner of Income-tax, 231 ITR 583 which is as under :-

"Whatever expenditure is incurred by the company in respect of a managing director or other director by way of remuneration or benefit or amenity, would be covered under section 40(c) and whatever expenditure by way of salary or perquisites is incurred by it in respect of the person, having a dual role of director and employee, in his capacity as an employee, will be computed under clauses (i) and (ii) of section 40A(5)(a) of the Income-tax Act. There will thus be no overlapping between the expenditure incurred by a company over a director which falls in clauses (i) and (ii) of section 40(c) and the expenditure incurred by the company of the nature falling in clauses (i) and (ii) of section 40A(5)(a), which would be relatable only to his capacity as an employee where the director is also an employee. These two types of expenditure, namely, one incurred by the company in respect of the director who is also its employee, in his capacity as a director and the other incurred in his capacity as an employee, will thus be worked out independently, and, in view of the proviso to sub-section (5)(a) of section 40A, they will have to be aggregated and any expenditure in excess of the ceiling of Rs.72,000 provided in that proviso will not be allowed to be deducted. That is how the provisions of section 40(c) and section 40A(5)(a) read with its first proviso are intended to operate."

6. In view of the above referred to decision and the decision taken by this Court, we are of the view that the Tribunal has committed an error in coming to the conclusion that the payment on account of bonus and leave encashment to the Directors were required to be excluded for computing the disallowance under Section 40(c) of the Act.

7. We, therefore, answer the above question in the negative i.e. in favour of the revenue and against the assessee.

The reference is accordingly disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-

